

Opinions, Advice and Legislation Quarterly News

OPINIONS

CORRECTIONS

Question: Is Article 27, §618 of the Maryland Code obsolete, given subsequent enactments concerning transfer of custody of a prisoner?

Answer: Article 27, §618 is not obsolete, because circumstances exist in which its requirements still apply. The section's provision on extradition, however, is obsolete.

Opinion No. 98-009
April 23, 1998

CHARTER HOME RULE COUNTIES

Question: May the Montgomery County Charter be amended to require referendum approval of any tax increase imposed by the County Council?

Answer: No. The referendum requirement would be inconsistent with State law provisions governing these taxes.

Opinion No. 98-010
April 28, 1998

FINANCIAL INSTITUTIONS

Questions: 1. Is membership in State-chartered credit unions limited by Maryland law to those individuals having a single common bond with all other members of the credit union?

2. Does the Commissioner of Financial Regulation have the authority to rely upon the so-called "wild card" statute to allow multiple employer groups as members in a Maryland credit union, if this breadth of membership were permissible under federal law?

Answers: 1. All members of a State-chartered credit union must share with all other members a single common bond.

2. If federal law allowed multiple common bonds among members of federally chartered credit unions, the Commissioner could apply the "wild card" statute.

Opinion No. 98-012
May 5, 1998

HEALTH

Question: Does the consolidation of what was formerly known as the Montebello Center into Kernan Hospital relieve the State of its obligation to comply with the payment negotiation provision in §13-405(d)(6) of the Education Article?

Answer: No.

Opinion No. 98-015

June 2, 1998

Question: Does a special police officer have authority to transport and maintain custody and control over an individual for purposes of obtaining an emergency evaluation of an apparent mental disorder under the emergency evaluation law?

Answer: A special police officer, acting solely in that capacity, may not exercise the authority granted to a “peace officer” under the emergency evaluation law.

Opinion No. 98-016

June 30, 1998

HEALTH OCCUPATIONS

Question: The request asks for an analysis, given a particular set of facts, of four separate federal and State laws that attempt to avert conflicts of interest in medical practice.

Answer: Although firm conclusions cannot be provided, the opinion analyzes the potential application to the facts of the Maryland fee-splitting statute, the federal anti-kickback statute, the federal self-referral statute, and the Maryland self-referral statute.

Opinion No. 98-013

May 26, 1998

INSURANCE

Question: Does a statute imposing time limits on “retroactive denials” of claims apply to claims submitted to a health benefits carrier prior to the law’s effective date?

Answer: The statute, Chapter 163 of the Laws of Maryland 1997, applies to retroactive denials of claims that occur on or after October 1, 1997, regardless of the date that the claim was originally paid.

Opinion No. 98-014

May 28, 1998

ADVICE LETTERS

ALCOHOLIC BEVERAGES

Question: Does the Mayor and City Council of Baltimore constitute “the local governing body” for purposes of an enterprise zone application, and, if not, may the Secretary of Business and Economic Development take account of the separately submitted views of the City Council?

Answer: The Secretary should accept the City Solicitor's determination that the Board of Estimates, rather than the Mayor and City Council, is the "local governing body." The Secretary is free, however, to consider the views of the City Council in deciding whether to approve an enterprise zone application.

Hon. Robert W. Curran
April 21, 1998

ANIMALS

Question: Does the statutory prohibition on the importation and sale of alligators and crocodiles extend to caimans?

Answer: The term "alligator or crocodile" in the statutory prohibition was meant to refer only to "true" crocodiles and, therefore, should not be understood to include caimans.

Del. Wheeler R. Baker
June 2, 1998

ATTORNEYS

Question: Does money held by the Maryland Legal Services Corporation on June 30, 1998, become part of the newly created Maryland Legal Services Corporation Fund by operation of law?

Answer: No.

Robert J. Rhudy, Esq.
May 20, 1998

CONTRACT CLAUSE

Question: Are there constitutional defects in a proposed amendment to Senate Bill 652, a bill dealing with State claims against manufacturers of tobacco products, that would alter the terms of the fee arrangement between the Attorney General and the Law Offices of Peter G. Angelos contained in the contract regarding tobacco litigation by eliminating a contingency fee specified in the contract and providing that the compensation paid the Angelos firm would be a "reasonable fee determined by the court"?

Answer: No. The proposed amendment does not violate the single subject requirement of Article III, §29 of the Maryland Constitution or the Contract Clause of Article I, §10 of the U.S. Constitution.

Del. Robert L. Flanagan
April 8, 1998

EMPLOYMENT

Question: Did a manager defame an employee by describing the employee's proffer of a suggestion as "inappropriate at best" and reporting the matter to a senior manager?

Answer: No, the manager's words were not defamatory.

Senator Larry E. Haines
May 19, 1998

ESTABLISHMENT CLAUSE

Question: Would bond bill funding of a community center that is to be built and operated by a church violate the Establishment Clause?

Answer: No. The use of State funds for this purpose does not present a facial violation of the Establishment Clause.

Del. Norman H. Conway
April 7, 1998

LOCAL GOVERNMENT LIABILITY

Question: Would a local government that publishes bicycle maps be liable if someone is hurt while following an indicated bicycle route?

Answer: A local government would not be liable for injuries or damages caused by the negligence of motorist or other third parties but would be liable for injuries or damages caused by its failure to maintain public streets and roads in reasonably safe conditions.

Senator John C. Astle
Del. Michael E. Busch
June 10, 1998

FIRST AMENDMENT

Questions: 1. Does the practice adopted by the Ku Klux Klan of wrapping Klan leaflets around free local newspapers and delivering those papers door-to-door violate any law?

2. Would this practice violate the law if it were done with a paper that is not free?

3. Could such activity be made a crime without violating the First Amendment?

Answers: 1 and 2. Since it would appear that the intent of the Klan in this instance is to encourage people to read the leaflets as well as the newspapers, a statute prohibiting the unauthorized control over newspapers, including free newspapers, “with the intent to prevent other individuals from reading the newspapers” would not be violated. It would be a crime, however, if the Klan took pay newspapers for this purpose without paying for them.

3. While the Klan has a First Amendment right to distribute its own leaflets in a peaceable manner, the State may, consistent with the First Amendment, impose criminal penalties on the distribution of literature in tandem with another publication in a way that falsely indicates affiliation, sponsorship, or approval.

Del. Samuel I. Rosenberg
May 29, 1998

NORTHEAST INTERSTATE DAIRY COMPACT

Question: May a bill which provides for Maryland’s adherence to the Northeast Interstate Dairy Compact be amended?

Answer: Because the compact is considered a contract that has been approved by Congress, it may only be enacted with the same substantive provisions as have been enacted by other compact states.

Senator Clarence W. Blount
April 8, 1998

PROPERTY TAX ASSESSMENTS

Question: May the Department of Assessments and Taxation use a method of valuing real property that does not necessarily reflect the recent sale price of that property?

Answer: This practice is allowed by existing law.

Senator F. Vernon Boozer
May 20, 1998

PUBLIC INFORMATION ACT

Question: Does a requester have a right under the Maryland Public Information Act to submit a “standing request” to inspect newly created records within a category of records?

Answer: No.

Mark M. Viani, Esq.
May 22, 17, 1998

PUBLIC OFFICERS AND EMPLOYEES

Question: Is a member of the Maryland General Assembly barred by the Maryland Constitution from simultaneous employment as an assessor with the Department of Assessments and Taxation?

Answer: No.

Vincent dePaul Grisriel, Jr.

June 3, 1998

SALARY-SETTING AUTHORITY

Questions: 1. What would be the legal effect of a bill that gives the Maryland Public Broadcasting Commission certain independent salary-setting authority if Commission officials inaccurately represented to legislative committees that the measure had the support of employees? 2. If the bill is signed, would the Commission be authorized to use the cost-of-living increase approved by the 1999 budget bill to instead implement a pay-for-performance plan?

Answers: 1. Misrepresentation made by a bill's proponents have no impact on the constitutionality and legal sufficiency of a legislative enactment. A legislative decision is not open to challenge on the speculative ground that the General Assembly acted on the basis of an incomplete or erroneous view.

2. Yes.

Senator Larry E. Haines

May 19, 1998

TORT LIABILITY

Question: Does a local Parent and Teachers Association enjoy immunity from liability in connection with its sponsorship of a Cub Scout pack?

Answer: Although there is no provision of law under which a sponsoring PTA would be immune from liability, under some circumstances a PTA's liability could be limited to the amount of its insurance.

Del. Joseph F. Vallario

May 26, 1998

VOLUNTEERS

Question: Does the law requiring employees of recreation centers to obtain criminal history records checks apply to volunteers for boys and girls clubs that provide recreational programs for minors?

Answer: Although the law does not require this background check, these organizations may request criminal history records under the law if they choose to do so.

Del. Leo E. Green

June 11, 1998

If you would like a copy of any item in this newsletter, please call Kathy Izdebski (410) 576-6327 or e-mail at opinions@oag.state.md.us.